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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,132	06/30/2006	Daniel Steiger	EIS-009	1155
48234 7590 11/29/2010 MEREK, BLACKMON & VOORHEES, LLC 673 S. WASHINGTON ST ALEXANDRIA, VA 22314				
EXAMINER WILLIAMS, LEA				
ART UNIT		PAPER NUMBER		
1789				
MAIL DATE		DELIVERY MODE		
11/29/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/585,132

Applicant(s)

STEIGER ET AL.

Examiner

LELA S. WILLIAMS

Art Unit

1789

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last office action is persuasive and, therefore, the finality of the office action mailed 5/26/10 is withdrawn. The following action is NON-FINAL.
2. The indicated allowability of claims 4 and 5 is withdrawn in view of the newly discovered reference(s) to Cajigas US 4,289,788. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. **Claims 1-2 and 4-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 1 and 2 are drawn to a method for the instantisation of powders, however other than spraying lecithin and alginate onto powder particles and drying said powders, there are no method steps stated which clearly discloses a method for the instantisation of powders. The method as presently claimed does not clearly discloses a method or process. It is unclear how just the steps of spraying lecithin and alginate onto powder particles and drying the powders will be considered a "method for the instantisation of powders".

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-2 and 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cajigas US 4,289,788 in view of Fitzpatrick et al. GB 2,035,035, as evidenced by, <http://www.wisegeek.com/what-is-coconut-milk.htm>

Regarding claims 1 and 2, Cajigas discloses a method of making instant powders wherein alginate (col. 4, lines 44-52) and lecithin (col.6, lines 13-35) is applied to yogurt powders which also comprises dried skim milk (col. 7, lines 1-10), thus providing free surface fat. All components are either dry blended or spray dried (col.7, line 60-col. 8, line 7). Cajigas discloses “[l]ecithin also acts as an agent to wet or hydrate...” (col. 6, line 26), thereby rendering it obvious that lecithin is applied as a liquid; however, the reference states the use of alginate in powder form.

Fitzpatrick discloses the production of a high fat instantised milk powder (page 1, line 57) comprising free fat (page 1, line 100), wherein lecithin is combined with water and sprayed onto the milk powder particles (page 1, lines 65-75), the particles agglomerate and are dried (page 1, line 60). Fitzpatrick discloses the use of lecithin can lead to viscosity problems, however applying it as an aqueous emulsion overcomes said problems. Given it is known that alginate also effects the viscosity and given it functions as a thickener, one of ordinary skill in the art would have been motivated by the teaching of Fitzpatrick to apply both the lecithin and alginate of Cajigas, by combining with water and spraying the components onto the powder particles, in efforts to control the viscosity of the final product.

Regarding claims 4 and 5, as noted above, the reference discloses the use of a variety of dried milk product suitable for use in the composition (col. 7, lines 1-12) and although skimmed milk may be preferred, the reference does not limit the milk component to a specific type or teach against any type of milk, including coconut milk. It is well known that different milks have different properties as evidenced by the internet webpage titled *What is Coconut Milk* which discloses coconut milk is easily metabolized by the body, it is anti-carcinogenic, anti-microbial,

anti-viral, and the main saturated fat in the milk is lauric acid, which has been shown to promote brain and bone health. Therefore, given the reference does not limit the milk component, it would have been obvious to one of ordinary skill in the art at the time of the invention to choose any type of dried milk, including coconut milk, to achieve the desired health benefits.

Response to Arguments

9. Applicant's arguments, filed November 1, 2010, with respect to the rejection(s) of claim(s) 1 and 2 under Fitzpatrick et al. GB 2,035,035 in view of Le Gloahec U.S 2,400,834 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Cajigas US 4,289,788 in view of Fitzpatrick et al. GB 2,035,035. See above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LELA S. WILLIAMS whose telephone number is (571)270-1126. The examiner can normally be reached on Monday to Thursday from 7:30am-5pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LELA S. WILLIAMS
Examiner, Art Unit 1789

/L. S. W. /

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1787